

AMENDED IN SENATE JUNE 20, 2011

AMENDED IN SENATE JUNE 14, 2011

AMENDED IN ASSEMBLY APRIL 27, 2011

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1102**

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**Introduced by Assembly Member Lara**

February 18, 2011

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An act to amend Sections 8544.5, 8545, 8546.5, 8547.2, 8547.5, 8547.6, 8547.7, 8548, 8548.2, and 8548.9 of, and to repeal Section 12430 of, and to repeal Article 2 (commencing with Section 10520) of Chapter 4 of Part 2 of Division 2 of Title 2 of, the Government Code, relating to the State Auditor.

### **LEGISLATIVE COUNSEL’S DIGEST**

AB 1102, as amended, Lara. State Auditor.

(1) Existing law sets out the authority and duties of the State Auditor in conducting audits and surveys of specified entities, and of contracting for goods and services on behalf of the Bureau of State Audits. Existing law provides for reimbursement of the State Auditor by annual appropriation in the Budget Act, for specified costs incurred by the State Auditor in the performance of certain duties.

This bill would revise the provisions governing the scope and conduct of audits and surveys by the State Auditor and costs for which the State Audit Fund may be reimbursed.

(2) The California Whistleblower Protection Act requires the State Auditor to administer the act and to investigate and report on improper

governmental activities, as defined. The act requires the State Auditor to establish a means of submitting allegations of improper governmental activity, and prohibits the State Auditor from disclosing the identity of a person who provides information that results in an investigation unless the person provides written permission to make that disclosure.

This bill would revise the definition of improper governmental activities to include more activities, including actions that are a violation of a state rule, directive, policy, or procedure of general application.

This bill would instead prohibit the State Auditor from disclosing the identity of the person who provides information that results in an investigation without obtaining the person's express permission.

*(3) The act authorizes the State Auditor to request the assistance of any state department, agency, or employee in conducting any investigation required by the act.*

*This bill would expand that authorization to also authorize the State Auditor to request assistance evaluating an allegation or conducting any investigation of an improper governmental activity as authorized by the act.*

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*(4) The act requires the State Auditor, if he or she determines that an employee or agency has engaged in improper governmental activity, to issue an investigative report regarding that employee's specific activities, for purposes of pursuing adverse action against that employee. The act also requires the State Auditor to report the nature and details of the activity to the head of the agency or the appropriate appointing power, and authorizes the report to include recommended actions to prevent the reoccurrence of the activity.*

~~This bill would recast the provisions that require the State Auditor to report the general nature and details of the employee's activities to the agency in a manner that conforms to the reporting requirement that is more specific and for the purpose of taking adverse action against that employee as specified.~~

*This bill would revise those provisions to also authorize the State Auditor to report the findings of an investigation, and certain evidence to support that finding, to additional entities or individuals, including the head of any other agency that has direct oversight over the agency involved, a criminal law enforcement agency, an administrative law enforcement agency, or a licensing agency that has authority to investigate the matter.*

*This bill would also provide that, as an alternative to conducting its own investigation, the State Auditor is authorized to, if the State Auditor makes a certain finding on an allegation of improper governmental activities, refer an allegation to the involved state agency, or to another state agency having direct oversight of the involved state agency, to conduct an investigation of the allegation under the State Auditor's supervision. This bill would similarly authorize the State Auditor to refer an allegation to a criminal or administrative law enforcement agency.*

(3)

(5) Existing law requires the State Auditor to prepare for state employees a written explanation of the California Whistleblower Protection Act that includes prescribed information. Existing law requires the State Auditor to provide a notice to state agencies, as defined, that includes the information contained in the written explanation. Existing law prohibits state agencies from modifying the text of the notice.

This bill would conform the definition of state agency to the definition used in the California Whistleblower Protection Act, to include the Supreme Court, Court of Appeal, superior courts, and the Administrative Office of the Courts.

The bill would require any agency that posts or advertises the opportunity to submit whistleblower complaints through a program administered by the agency, to also disclose the opportunity to submit complaints to the State Auditor under the California Whistleblower Protection Act.

(4)

(6) This bill would also delete various obsolete provisions of law.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 8544.5 of the Government Code is  
2 amended to read:  
3 8544.5. (a) There is hereby established in the State Treasury  
4 the State Audit Fund. Notwithstanding Section 13340, the State  
5 Audit Fund is continuously appropriated for the expenses of the  
6 State Auditor. There shall be appropriated annually in the Budget  
7 Act to the State Audit Fund, from the General Fund and the Central

1 Service Cost Recovery Fund, the amount necessary to reimburse  
2 the State Audit Fund for the cost of audits and any other duties to  
3 be performed that are not directly reimbursed under subdivision  
4 (c), including for the cost of any other duties imposed on the bureau  
5 by statute. “Cost of audits or any other duties” means all direct  
6 and indirect costs of conducting the audits or other duties, and any  
7 other expenses incurred by the State Auditor in fulfilling his or  
8 her statutory responsibilities.

9 (b) With regard to the funds appropriated pursuant to subdivision  
10 (a), upon certification by the State Auditor of estimated costs on  
11 a monthly basis, the Controller shall transfer the amount thus  
12 certified from the General Fund or the Central Service Cost  
13 Recovery Fund, as applicable, to the State Audit Fund. The  
14 Controller shall thereafter issue warrants drawn against the State  
15 Audit Fund upon receipt of claims certified by the State Auditor.

16 (c) To ensure appropriate reimbursement from federal and  
17 special funds for the costs of the duties performed pursuant to  
18 Section 8546.3, the State Auditor may directly bill state agencies  
19 for the costs incurred, subject to the approval of the Director of  
20 Finance.

21 (d) To ensure adequate oversight of the operations of the bureau,  
22 the Milton Marks “Little Hoover” Commission on California State  
23 Government Organization and Economy shall annually obtain the  
24 services of an independent public accountant to audit the State  
25 Audit Fund and the operation of the bureau to assure compliance  
26 with state law, including Section 8546. The results of this audit  
27 shall be submitted to the commission and shall be a public record.

28 (e) To ensure that audits of the Milton Marks “Little Hoover”  
29 Commission on California State Government Organization and  
30 Economy are conducted in conformity with government auditing  
31 standards, any audit of the commission that is required or permitted  
32 by law shall be conducted by the independent public accountant  
33 selected pursuant to subdivision (d).

34 SEC. 2. Section 8545 of the Government Code is amended to  
35 read:

36 8545. The State Auditor shall not destroy any papers or  
37 memoranda used to support a completed audit sooner than three  
38 years after the audit report is released to the public. All books,  
39 papers, records, and correspondence of the bureau pertaining to  
40 its work are public records subject to Chapter 3.5 (commencing

1 with Section 6250) of Division 7 of Title 1 and shall be filed at  
2 any of the regularly maintained offices of the State Auditor, except  
3 that none of the following items or papers of which these items  
4 are a part shall be released to the public by the State Auditor, his  
5 or her employees, or members of the commission:

6 (a) Personal papers and correspondence of any person providing  
7 assistance to the State Auditor when that person has requested in  
8 writing that his or her papers and correspondence be kept private  
9 and confidential. Those papers and correspondence shall become  
10 public records if the written request is withdrawn or upon the order  
11 of the State Auditor.

12 (b) Papers, correspondence, memoranda, or any substantive  
13 information pertaining to any audit not completed.

14 (c) Papers, correspondence, or memoranda pertaining to any  
15 audit that has been completed, which papers, correspondence, or  
16 memoranda are not used in support of any report resulting from  
17 the audit.

18 (d) Any survey of public employees that the State Auditor  
19 determines should be kept confidential because the employees  
20 have expressed fear of retaliation by their employer if they respond  
21 to the survey.

22 SEC. 3. Section 8546.5 of the Government Code is amended  
23 to read:

24 8546.5. (a) The State Auditor may establish a high-risk  
25 government agency audit program for the purpose of identifying,  
26 auditing, and issuing reports on any agency of the state, whether  
27 created by the California Constitution or otherwise, as well as  
28 statewide issues, that the State Auditor identifies as being at high  
29 risk for the potential of waste, fraud, abuse, and mismanagement  
30 or that has major challenges associated with its economy,  
31 efficiency, or effectiveness.

32 (b) In addition to identifying an agency as high risk on the basis  
33 of weaknesses identified in audit and investigative reports produced  
34 by the bureau, the State Auditor may consult with the Legislative  
35 Analyst, the Milton Marks "Little Hoover" Commission on  
36 California State Government Organization and Economy, the  
37 Office of Inspector General within the Department of Corrections,  
38 the Department of Finance, and other state agencies that have  
39 oversight responsibilities over any other agency of the state, in  
40 identifying state agencies that are at high risk.

1 (c) The State Auditor shall notify the Joint Legislative Audit  
2 Committee whenever it identifies a state agency as at high risk.

3 (d) The State Auditor may issue audit reports with  
4 recommendations for improvement in state agencies, and for  
5 statewide issues, identified as at high risk not less than once every  
6 two years.

7 (e) The State Auditor may require state agencies identified as  
8 high risk, or as responsible for all or a portion of a statewide issue  
9 identified as high risk, to periodically report to the auditor  
10 regarding the status of recommendations for improvement made  
11 by the State Auditor or other state oversight agencies.

12 SEC. 4. Section 8547.2 of the Government Code is amended  
13 to read:

14 8547.2. For the purposes of this article, the following terms  
15 have the following meanings:

16 (a) "Employee" means an individual appointed by the Governor,  
17 or employed or holding office in a state agency as defined by  
18 Section 11000, including, for purposes of Sections 8547.3 to  
19 8547.7, inclusive, an employee of the California State University,  
20 or an individual appointed by the Legislature to a state board or  
21 commission and who is not a Member or employee of the  
22 Legislature. In addition, "employee" means a person employed by  
23 the Supreme Court, a court of appeal, a superior court, or the  
24 Administrative Office of the Courts for the purposes of Sections  
25 8547.3 to 8547.7, inclusive, and Section 8547.13, except for those  
26 provisions of Section 8547.4 concerning notice of adverse action  
27 and the State Personnel Board. "Employee" includes a former  
28 employee who met the criteria of this subdivision during his or  
29 her employment.

30 (b) "Illegal order" means a directive to violate or assist in  
31 violating a federal, state, or local law, rule, or regulation, or an  
32 order to work or cause others to work in conditions outside of their  
33 line of duty that would unreasonably threaten the health or safety  
34 of employees or the public.

35 (c) "Improper governmental activity" means an activity by a  
36 state agency or by an employee that is undertaken in the  
37 performance of the employee's duties, undertaken inside a state  
38 office, or, if undertaken outside a state office by the employee,  
39 directly relates to state government, whether or not that activity is  
40 within the scope of his or her employment, and that (1) is in

1 violation of any state or federal law or regulation, including, but  
2 not limited to, corruption, malfeasance, bribery, theft of  
3 government property, fraudulent claims, fraud, coercion,  
4 conversion, malicious prosecution, misuse of government property,  
5 or willful omission to perform duty, (2) is in violation of a state  
6 rule, directive, policy, or procedure of general application,  
7 including an executive order of the Governor, a California Rule  
8 of Court, or a policy or procedure mandated by the State  
9 Administrative Manual or State Contracting Manual, or (3) is  
10 economically wasteful, involves significant misconduct, including  
11 causes for discipline specified in Section 19572, involves  
12 incompetency that reflects an absence of qualification, ability, or  
13 fitness to perform a prescribed duty or function, or involves  
14 inefficiency that may adversely affect the state or members of the  
15 public. For purposes of Sections 8547.4, 8547.5, 8547.10, and  
16 8547.11, “improper governmental activity” includes any activity  
17 by the University of California or by an employee, including an  
18 officer or faculty member, who otherwise meets the criteria of this  
19 subdivision. For purposes of Sections 8547.4, 8547.5, and 8547.13,  
20 “improper governmental activity” includes any activity by the  
21 Supreme Court, a court of appeal, a superior court, or the  
22 Administrative Office of the Courts, or by an employee thereof,  
23 who otherwise meets the criteria of this subdivision.

24 (d) “Person” means an individual, corporation, trust, association,  
25 a state or local government, or an agency or instrumentality of any  
26 of the foregoing.

27 (e) “Protected disclosure” means a good faith communication,  
28 including a communication based on, or when carrying out, job  
29 duties, that discloses or demonstrates an intention to disclose  
30 information that may evidence (1) an improper governmental  
31 activity, or (2) a condition that may significantly threaten the health  
32 or safety of employees or the public if the disclosure or intention  
33 to disclose was made for the purpose of remedying that condition.  
34 Protected disclosure specifically includes a good faith  
35 communication to the Bureau of State Audits alleging an improper  
36 governmental activity and any evidence delivered to the Bureau  
37 of State Audits in support of the allegation. “Protected disclosure”  
38 also includes, but is not limited to, a complaint made to the  
39 Commission on Judicial Performance.

(f) “State agency” is defined by Section 11000. “State agency” includes the University of California for purposes of Sections 8547.5 to 8547.7, inclusive, and the California State University for purposes of Sections 8547.3 to 8547.7, inclusive. Sections 8547.3 to 8547.7, inclusive, shall apply to the Supreme Court, the courts of appeal, the superior courts, and the Administrative Office of the Courts in the same manner as they apply to a state agency.

SEC. 5. Section 8547.5 of the Government Code is amended to read:

8547.5. (a) The State Auditor shall create the means for the submission of allegations of improper governmental activity both by transmission via mail or other carrier to a specified mailing address and electronic submission through an Internet Web site portal. The State Auditor may request that a person submitting an allegation provide his or her name and contact information and provide the names and contact information for any persons who could help to substantiate the claim. However, the State Auditor shall not require any person submitting an allegation to provide his or her name or contact information and shall clearly state on the agency *Internet* Web site that this information is not required in order to submit an allegation.

(b) Upon receiving specific information that any employee or state agency has engaged in an improper governmental activity, the State Auditor may conduct an investigation of the matter. The identity of the person providing the information that initiated the investigation, or of any person providing information in confidence to further an investigation, shall not be disclosed without the express permission of the person providing the information except that the State Auditor may make the disclosure to a law enforcement agency that is conducting a criminal investigation.

SEC. 6. Section 8547.6 of the Government Code is amended to read:

8547.6. (a) The State Auditor may request the assistance of any state department, agency, or employee in evaluating an allegation or conducting any investigation of an improper governmental activity as authorized by this article. In response to a request for assistance from the State Auditor, ~~a state agency that~~ *state department, agency*, or employee shall provide the assistance, including, but not limited to, providing access to documents or other information in a timely manner, as required by Section



1 8545.2. If an investigation conducted by the State Auditor involves  
2 access to confidential academic peer review records of University  
3 of California academic personnel, these records shall be provided  
4 in a form consistent with university policy effective on August 1,  
5 1992. No information obtained from the State Auditor by any  
6 department, agency, or employee as a result of the State Auditor's  
7 request for assistance, nor any information obtained thereafter as  
8 a result of further investigation, shall be divulged or made known  
9 to any person without the prior approval of the State Auditor.

10 ~~(b) Notwithstanding any other law, instead of seeking assistance~~  
11 ~~from an agency pursuant to subdivision (a) and as an alternative~~  
12 ~~to initiating or completing an investigation, if the State Auditor~~  
13 ~~determines that there is reasonable cause to believe that a state~~  
14 ~~agency or employee may have engaged in an improper~~  
15 ~~governmental activity, the State Auditor, subject to the limitations~~  
16 ~~of Section 8547.5, may refer the allegation to the state agency~~  
17 ~~involved, or to a criminal or administrative law enforcement agency~~  
18 ~~that has jurisdiction over the agency. If the State Auditor refers an~~  
19 ~~allegation pursuant to this subdivision, that agency shall investigate~~  
20 ~~the allegation and report the results of the investigation to the State~~  
21 ~~Auditor within 60 days of the referral, and monthly thereafter until~~  
22 ~~final action has been taken.~~

23 *(b) As an alternative to conducting its own investigation, if the*  
24 *State Auditor determines that there is reasonable cause to believe*  
25 *that a state agency or employee may have engaged in an improper*  
26 *governmental activity, the State Auditor, subject to the limitations*  
27 *of Section 8547.5, may refer the allegation to the involved state*  
28 *agency, or to another state agency having direct oversight of the*  
29 *involved state agency, to conduct an investigation of the allegation*  
30 *under the State Auditor's supervision. If the State Auditor refers*  
31 *an allegation to the involved state agency or to another state*  
32 *agency having direct oversight of the involved state agency, that*  
33 *state agency shall investigate the allegation and report the results*  
34 *of the investigation to the State Auditor within 60 days of the*  
35 *referral and monthly thereafter until final action has been taken.*  
36 *In addition, whenever the State Auditor determines that there is*  
37 *reasonable cause to believe that a state agency or employee may*  
38 *have engaged in an improper governmental activity, the State*  
39 *Auditor, subject to the limitations of Section 8547.5, may refer the*

1 *allegation to a criminal or administrative law enforcement agency*  
2 *in lieu of conducting or supervising an investigation of the matter.*

3 SEC. 7. Section 8547.7 of the Government Code is amended  
4 to read:

5 8547.7. (a) If, after investigating an allegation, the State  
6 Auditor finds that a state agency or employee may have engaged  
7 or participated in an improper governmental activity, he or she  
8 shall prepare an investigative report and send a copy of that report  
9 to the head of the agency involved and to the head of any other  
10 agency that has direct oversight over that involved agency. The  
11 investigative report may include the State Auditor's recommended  
12 actions to prevent the continuation or recurrence of the activity.  
13 If appropriate, the State Auditor shall report this information to  
14 the Attorney General, the policy committees of the Senate and  
15 Assembly having jurisdiction over the subject involved, and to  
16 any other authority that the State Auditor determines appropriate.  
17 Subject to the limitations of Section 8547.5, the State Auditor may  
18 provide to the involved agency any evidence gathered during the  
19 investigation that, in the judgment of the State Auditor, is necessary  
20 to support any of the recommendations. Within 60 days of  
21 receiving the State Auditor's investigative report, the involved  
22 agency shall report to the State Auditor any actions that it has taken  
23 or that it intends to take to implement the recommendations. The  
24 agency shall file subsequent reports on a monthly basis until final  
25 action has been taken.

26 (b) The State Auditor shall not have any enforcement power.  
27 In any case in which the State Auditor finds that a state agency or  
28 employee may have engaged in an improper governmental activity,  
29 the State Auditor may provide the finding, and any evidence  
30 supporting the finding, subject to the limitations of Section 8547.5,  
31 to a criminal law enforcement agency, an administrative law  
32 enforcement agency, or a licensing agency that has authority to  
33 investigate the matter.

34 (c) The State Auditor shall keep confidential every investigation,  
35 including, but not limited to, all investigative files and work  
36 product, except that the State Auditor, whenever he or she  
37 determines it necessary to serve the interests of the state, and  
38 subject to the limitations of Section 8547.5, may issue a public  
39 report of an investigation that has substantiated an improper  
40 governmental activity, keeping confidential the identity of the

1 employee or employees involved. In addition, subject to the  
2 limitations of Section 8547.5, the State Auditor may release any  
3 findings or evidence supporting any findings resulting from an  
4 investigation conducted pursuant to this article whenever the State  
5 Auditor determines it necessary to serve the interests of the state.

6 (d) This section does not limit any authority conferred upon the  
7 Attorney General or any other department or agency of government  
8 to investigate any matter.

9 SEC. 8. Section 8548 of the Government Code is amended to  
10 read:

11 8548. For purposes of this article, “state agency” means every  
12 state office, officer, department, division, bureau, board, and  
13 commission, including the California State University, the  
14 University of California the Supreme Court, the Court of Appeal,  
15 the superior courts, and the Administrative Office of the Courts.

16 SEC. 9. Section 8548.2 of the Government Code is amended  
17 to read:

18 8548.2. The State Auditor shall prepare for distribution to each  
19 state agency in an electronic format a notice containing the  
20 information in the written explanation prepared pursuant to Section  
21 8548.1. No later than July 1, 2002, each state agency shall print  
22 and post this notice at its state office or offices in a location or  
23 locations where employee notices are maintained. A state agency  
24 shall not edit the written text of the notice but it may publish the  
25 notice in a manner it chooses, and it may include its own  
26 introductory language in the notice, provided that the language  
27 and the format selected do not alter the meaning of the notice. In  
28 addition, whenever a state agency posts or advertises the  
29 opportunity to submit whistleblower complaints through a program  
30 administered by the agency, it shall also disclose the opportunity  
31 to submit complaints to the State Auditor under the California  
32 Whistleblower Protection Act (Article 3 (commencing with Section  
33 8547)).

34 SEC. 10. Section 8548.9 of the Government Code is amended  
35 to read:

36 8548.9. (a) The State Auditor shall, by January 15th of each  
37 year, report to the Joint Legislative Budget Committee, the Joint  
38 Legislative Audit Committee, and the Department of Finance with  
39 respect to each recommendation he or she has made based on an

1 audit or investigation that was reported more than one year prior  
2 and that has not been fully implemented by the affected agency.

3 (b) The report shall clearly identify the state agency audited or  
4 investigated, the audit or investigation that contained the  
5 recommendation, a brief description of the recommendation, the  
6 date it was issued, and the most recent explanation provided by  
7 the agency to the State Auditor on the status of the  
8 recommendation.

9 (c) Any state agency that is notified by the State Auditor that it  
10 has not fully implemented a recommendation made pursuant to  
11 this chapter more than one year prior, shall do either of the  
12 following:

13 (1) Provide a written report to the State Auditor, the respective  
14 policy committees and budget subcommittees of the Assembly  
15 and Senate with oversight of the agency, and the Department of  
16 Finance, explaining why the audit recommendation or investigation  
17 has not been fully implemented.

18 (2) Notify all entities described in subdivision (a) that it will  
19 begin implementing the audit recommendation or investigation  
20 recommendation within 90 days of the notification by the State  
21 Auditor, and include the estimated date of full implementation.

22 (d) For the purposes of this section, “state agency” means a state  
23 agency as defined by Section 11000, the California State  
24 University, the Supreme Court, a Court of Appeal, a superior court,  
25 and the Administrative Office of the Courts.

26 SEC. 11. Article 2 (commencing with Section 10520) of  
27 Chapter 4 of Part 2 of Division 2 of Title 2 of the Government  
28 Code is repealed.

29 SEC. 12. Section 12430 of the Government Code is repealed.